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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,859	06/26/2003	Oren Kaidar	P-5753-US	1426
49444	7590	11/29/2007		
PEARL COHEN ZEDEK LATZER, LLP 1500 BROADWAY, 12TH FLOOR NEW YORK, NY 10036			EXAMINER SOL, ANTHONY M	
			ART UNIT 2619	PAPER NUMBER
			MAIL DATE 11/29/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/603,859

Applicant(s)

KAIDAR ET AL.

Examiner

Anthony Sol

Art Unit

2619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

- Applicant's Amendment filed 9/4/2007 is acknowledged.
- Claims 1, 8, 17, 20 and 23-25 have been amended.
- Claims 26-28 have been canceled.
- Claims 1-25 are now pending.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 4-11, and 13-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Pub. No. US 2004/0202141 A1 ("Sinivaara").

Regarding claim 1, 8-10, 17, 19, 20, 21 and 23,

Sinivaara discloses scanning a channel (para. 82, *it starts to scan through the channels*), receiving a packet on the channel (para. 82, *the terminal receives the service reports*), determining if the received packet is an informational packet (para. 81, *the transmission can be ... a Probe Response*), joining a wireless network associated with the received packet if the received packet is an informational packet (para. 83, *... the*

*terminal selects the access point with the maximum RSSI), determining information regarding the channel from the received packet if the received packet is not an informational packet (para. 83, The transmission can be ... a multicast transmission; para. 83, The terminal checks each attribute by comparing its value with the accepted values) and switching to a different channel for scanning if said information indicates the channel is not desirable (para. 83, If all the service reports received contain one or more unacceptable attributes, the terminal may continue scanning).*

Regarding claim 2, 11, 18, 22, and 24,

Sinivaara discloses that the terminals checks each attribute by comparing its value with the accepted values and switching to a different channel for scanning if said information indicates the channel is not desirable (para. 83).

Regarding claims 4, 5, 13, and 14,

Sinivaara discloses the service report attribute, the average load of the access point (para. 89).

Regarding claims 6 and 15,

Sinivaara discloses that RSSI is a key primary attribute (para. 83).

Regarding claims 7 and 16,

Sinivaara discloses that a mobile terminal must first join the network. In this process, which is commonly termed association, the mobile station associates with one of the access points in its neighborhood (para. 4). It is inherent that a mobile terminal sends an association request (claimed transmitting a request to join) to the access point, which returns an association response.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 12 and 25, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sinivaara in view of Pub. No. US 2005/0073979 A1 ("Barber").

Regarding claims 3, 12 and 25,

Sinivaara does not explicitly disclose if the service reports include the number of retries.

Barber discloses that in a passive scan, an access point "listens" to all passing frames and reports their statistical information (e.g., channel, time, data, **transmission achieved yes/no**, signal quality and signal strength, latency, sent to, sent from and throughput)(para. 78). Barber further discloses scheduling a retransmission if no

positive acknowledgement is received (para. 12). Thus, "transmission achieved yes/no" statistic directly relates to the number of retries.

It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention was made to modify the service reports of Sinivaara to include the number of retries/retransmissions as disclosed by Barber. One skilled in the art would have been motivated to make the combination since other attributes besides RSSI can affect the quality of service (Sinivaara, para. 83) and since the assumption that the access point with the maximum RSSI provides the best quality of service may lead to a situation where an overwhelming majority of the mobile terminals is associated with a few access points, while some of the access points are substantially idle (Sinivaara, para. 7).

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Sol whose telephone number is (571) 272-5949. The examiner can normally be reached on M-F 7:30am - 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on (571) 272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
11/26/07  
WING CHAN  
SUPERVISORY PATENT EXAMINER

AMS

11/23/2007